

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

September 26, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Oahu

Forfeiture of General Lease No. S-3854, Patrick Maloney and Nancy Maloney, Lessees,  
Waimanalo, Koolauoko, Oahu, Tax Map Key: (1) 4-1-026:18.

PURPOSE:

Forfeiture of General Lease No. S-3854, Patrick Maloney and Nancy Maloney, Lessees.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land situated at Waimanalo, Koolauoko, Oahu, identified by Tax Map  
Key: (1) 4-1-026:18, as shown on the attached map labeled Exhibit A.

AREA:

5.492 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES    NO   X  

CHARACTER OF USE:

Agriculture, diversified shall mean the cultivation of truck, orchard, flower, and nursery crops and shall not include or embrace the cultivation of grasses or forage crops except as "cover crops" and then only for the short periods between crops consistent with good diversified crop practices; and provided, further, that nothing in this paragraph shall be construed as intending to prohibit the Lessee and his employees from maintaining a home garden and keeping chickens or other food/or pleasure animals (excepting swine) for his own use and not for sale to others.

TERM OF LEASE:

45 years, commencing on August 10, 1964 and extended to August 9, 2009.

ANNUAL RENTAL:

\$3,530.00 due in annual payment.

REMARKS:

Pursuant to a complaint received by the Department, staff conducted a site inspection of the property on April 14, 2008. The complaint alleges the lessees subleasing portion of the property, operating a carpentry business and dumping of abandoned vehicles on the property. Findings of the inspection are listed below.

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 13, 1980 and the breach provision contained in General Lease S-3854, Patrick and Nancy Maloney, Lessees, were served a Notice of Default (NOD) by certified mail dated June 6, 2008 for:

- X Failure to comply with condition No. 18 of General Lease No. S-3854, which requires the Lessee use the demised premises for diversified agriculture as defined in the Lease.

During the inspection, staff noticed that there were fish tanks located on the premises for the raising of tropical fishes, stacks of lumber for the production of cabinetry woodwork as well as for the construction of racks for the placement of the fish tanks.

- X Failure to comply with condition No. 11 of the Extension of General Lease No. S-3854 under "Improvements", which states in pertinent part, " The Lessee shall not at any time during said term construct, place, maintain and install on the premises any building, structure or improvement of any kind and description whatsoever except with the prior written approval of the Board and upon such conditions as the Board may impose, including any adjustment of rent, unless otherwise provided herein."

During the inspection, staff noted that there were three dwelling structures, one office /storage structure, three nursery shade-houses, one storage shed and two storage rooms.

Our records do not indicate any prior written approval given from the Board for any of the structures mentioned above.

- X Failure to comply with condition No. 14 of the Extension of General Lease No. S-3854 under "Subletting", which states in pertinent part, " The Lessee shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Board."

Mr. and Mrs. Slutter, wrote to the Department and informed us that they were illegally subleasing the State properties located at 41-510 & 41-512 Waikupanaha Street from Pat Maloney. The Slutters provided copies of checks dating from 2004 to 2007 made payable to

April 7, 2008 signed by Patrick Maloney, Mr. and Mrs. Nathan Slutter were informed that their lease agreement with him would be terminated on May 23, 2008. (See attached letter labeled Exhibit B).

Our records do not indicate any prior written approval given from the Board for any subletting of the subject premises.

- X Failure to comply with condition No. 39 of General Lease No. S-3854 under "Residence use", which states in pertinent part, " The Lessee may, but shall not be required to, maintain his residence (or that of his agent but not of both of them except as provided herein) on the demised premises; provided, however, that not more than one single-family dwelling shall be permitted on the demised premises except that the Lessor may, in its discretion, permit one additional dwelling for employee housing if the need for such housing is clearly demonstrated, and construction of such additional dwelling shall require the written consent of the Lessor. Such additional dwelling shall be for employee housing only and shall in no case and at no time during the term of this lease be used for rental purposes.

Staff noted that there were three dwellings on the subject premises. Our files do not indicate any approval for any employee housing.

- X Failure to comply with condition No. 23 of General Lease No. S-3854 under "Sanitation, etc.", which states in pertinent part, " That the Lessee shall, during the whole of the term of this lease, maintain the demised premises in a sanitary and orderly condition satisfactory to the Lessor and in conformity with the Public Health Regulations of the Department of Health and with all applicable laws, ordinances, rules and regulations of the federal government, State and local governments, with special reference to but not limited to the regulations of the State Department of Agriculture."

Staff noted there were 10 derelict vehicles, one inoperable tractor and a boat, which were located on the subject premises.

The NOD, accepted by the Lessees on June 12, 2008, offers the lessees a sixty-day cure period to correct the default. This cure period expired on August 12, 2008. At the time of writing this submittal, some of the violations mentioned above have been cured as detailed in the following paragraph. The lessees are in compliance with the lease regarding rent, insurance, performance bond, and conservation plan.

An inspection was conducted on August 22, 2008 in the presence of Mr. Maloney revealed that the 10 derelict vehicles, inoperable tractor and boat were removed from the premises, the tenant whom was subletting from Mr. Maloney had vacated the premises, the upper nursery shade house was demolished, the enclosed walls of two storage rooms were removed, the shed structure was removed and the lumber and machinery for the cabinet wood work were removed.

In short, the lessees are still in violation of conducting unauthorized use on the property, and excessive and unauthorized dwellings.

By way of letter dated August 29, 2008, Mr. Maloney has stated that he had corrected all but two of the non-compliant issues mentioned above is requesting an extension of the cure period of sixty (60) days to cure the remaining issues mentioned above. (See Exhibit C)

Staff notes the raising of tropical fish in relation to the permitted use under the lease was brought to the Board in March 2005. The Board deferred the item and instructed the staff sought advice from the Department of the Attorney General (AG). Subsequently, AG advised that raising of tropical fish is not permitted under the subject lease. So, staff brought the item to the Board on August 12, 2005, (item D-14). According to the minutes, the Board deferred the item due to the fact that Mr. Maloney did not have time to consult with AG on his proposed solutions to correct the default. Staff met with Mr. Maloney and he agreed to inform the staff once he resumed his nursery operation of the property. Staff never received such notification from Mr. Maloney.

In addition to the above, Mr. Maloney stated that the three dwelling structures were already on the property when the lease was assigned to him in May 1982. He stated he was unaware that the dwelling structures required the Land Board approval. Mr. Maloney is requesting an after-the-fact approval from the Land Board for the allowance of the two dwelling structures and office structure on the property. If allowed, Mr. Maloney will be submitting the appropriate application with the City and County of Honolulu, Department of Planning and Permitting for the building permits for those structures. Staff responds that the lessees should do their own due diligence when they acquired the lease from previous lessee. Any amendment of the lease conditions is not permissible because the subject lease was sold through public auction process.

In view of the outstanding violations, staff recommends the Board authorize the forfeiture of the subject lease.

For Board's information, the subject lease expires on August 9, 2009. The lessees were notified of the imminent expiration date and asked if they intend to request for a lease extension. Mr. Maloney responded that he would use his own personal savings to improve the property. In doing so, he would ask the Board to grant him an extension pursuant to 171-36(b), HRS. In order to justify the length of the extended period, staff asked for a breakdown on the use of the loan proceeds. Further, any request for lease extension requires the lessee's compliance with the terms and conditions of the lease. Notwithstanding the outstanding defaults mentioned above, Mr. Maloney has not provided the required material to the staff yet. In view of the time involved in a lease extension process, staff reminded Mr. Maloney about the timing issue on multiple occasions.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of General Lease No. S-3854 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-3854 to be applied to any past due amounts;
3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of September 26, 2008, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and

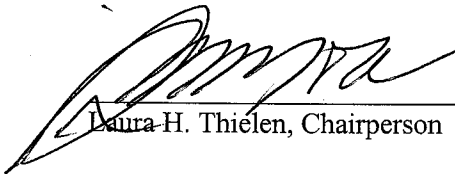
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-3854 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,



Steve Lau  
Land Agent

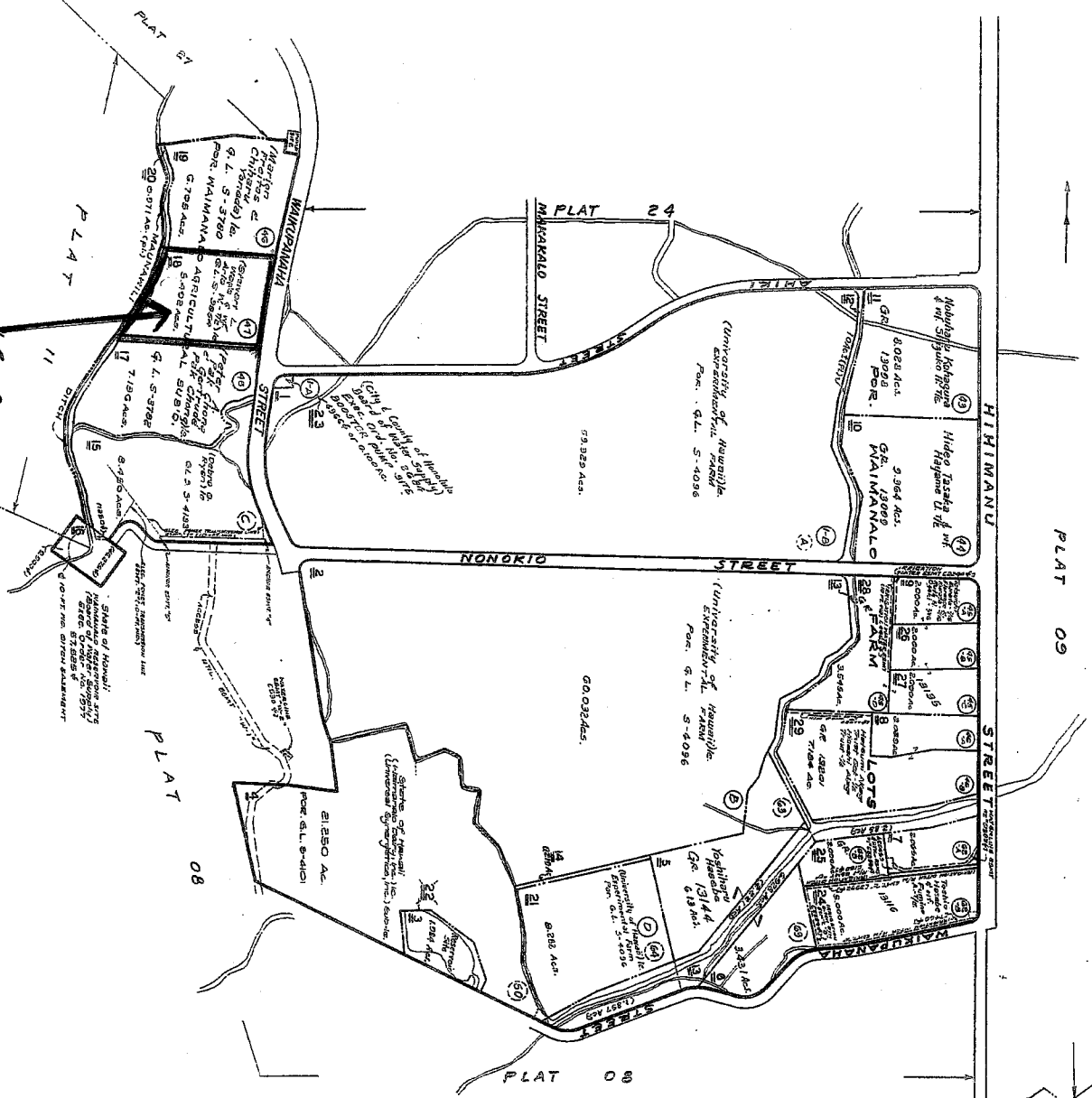
APPROVED FOR SUBMITTAL:

  
Laura H. Thielen, Chairperson



MAIMANALO, KOOLAUPOKO, OAHU.

SUBJECT  
ME: (1) 4-1-026:18



SUBJECT TO CHANGE

Note: All resources, flume ditches, culverts, pumps, pipelines and other structures comprising the water rights of the State of Hawaii are shown on this map. The State of Hawaii is the owner of the water rights of the State of Hawaii. The State of Hawaii is the owner of the water rights of the State of Hawaii.

DEPARTMENT OF THE TAX COMMISSIONER TAXATION MAPS BUREAU TAX MAP			
CONTINUING	ZONE	SEC.	DIVISION
4	1	26	PARCELS
SCALE 1 IN. = 300 FT.			

EXHIBIT "A"

April 7, 2008

Dear Nate and Vib,

We would like to terminate our lease agreement with you on May 23, 2008. We are hereby giving you the required 45-day notice to vacate the premises.

Please be advised that we will not tolerate any damage to the existing structure and are prepared to call upon the police, if necessary. While we would hope not to be forced to use the court system and the sheriff's department to accomplish your departure, we will do so, if necessary.

As previously acknowledged, you may remove the following items:

- Kitchen cabinets, including counter top and sink, and all appliances
- The propane gas line and storage tank
- The hot water heater, washing machine, and dryer
- The bathroom sinks, toilet, mirrors, and cabinets
- The Jacuzzi and shower system
- Ceiling fans, closet shelving systems, and air conditioners
- The mailbox, motion light, and exterior light fixtures

You must also remove your storage container, boat, New Holland equipment, vehicles, motorcycle, and all other personal items.

Please be further advised that the entrance door & door hardware, all windows, all electrical outlets & switches, electrical wiring, electric meter, plumbing, walls & ceilings, and the retaining wall are to be left undisturbed. If there are any questions, please contact me. However, any deviation from the above list of personal items has to be acknowledged by me in writing.

I hope we can achieve your departure without further rancor.

I am also enclosing your latest electric bill, which we expect you to pay immediately.

Sincerely,



Patrick J. Maloney

**EXHIBIT "B"**

April 7, 2008

Dear Nate and Vib,

Your rent of \$1000.00 for the month of April is past due. We are, hereby, demanding full payment by April 15, 2008. Unless payment is made within this period, our rental agreement will be terminated. We may thereafter bring a summary proceeding for possession of the dwelling.

We would hope that you pay your rent immediately and forego any further unpleasanties.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patrick J. Maloney". The signature is fluid and stylized, with the first and last names being more prominent than the middle initial.

Patrick J. Maloney



RECEIVED  
LAND DIVISION

2008 AUG 29 A 11:19

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Patrick and Nancy Maloney  
41-512 Waikupanaha Street  
Waimanalo, Hawaii 96795

August 29, 2008

Steve Lau, Land Agent  
State of Hawaii  
Department of Land and Natural Resources  
Land Division  
Post Office Box 621  
Honolulu, Hawaii 96809

RE: General Lease No. S-3854, Notice of Default

Dear Mr. Lau:

During your recent inspection on August 22, 2008, I believe it was acknowledged that we had corrected all of the non-compliant issues stated in the above referenced Notice of Default, dated June 10, 2008, with the exception of the following two items.

- There still remains the issue of whether or not aquaculture is an allowed activity according to the terms of our Lease. I believe that it is and I believe that the last time this question came up before the Board, it was deferred. The necessity of an integrated workshop within a fish farm was explained during your inspection. I understand that if I am unsuccessful in getting the Board's approval of my explanation for the acceptability of aquaculture, there would be no justification for such a workshop and it will be removed. However, I am hopeful that the Board will accept my understanding of the Lease conditions and allow my aquaculture facility to continue to operate here.
- The second unresolved issue concerns existing structures. As was shown during the inspection, any structure that was erected without a building permit during our tenure has been removed. There appears to be questions about two structures that were already in existence when we acquired the Lease in 1984. We had thought it reasonable to assume that any questions about the legitimacy of these structures had been resolved prior to Board approval of reassignment of this Lease to us. However, we have been in contact with Carol Sakai-Feiteira, the City and County Housing - Zoning Code Inspector handling such cases, to determine the actual status of these two structures. If it turns out that these were erected without a permit by the previous lessee, we are prepared to take the necessary steps to correct that situation. As recently

**EXHIBIT "C"**

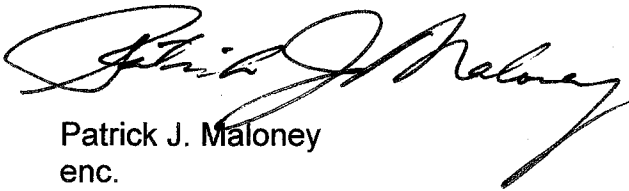
as yesterday, Ms. Sakai-Feiteira has said that she will get back to me with the answer.

We respectfully request that the original cure period for the June 10, 2008 Notice of Default be extended for sixty days in order to fully address these issues.

We have also been informed that there is the possibility that our Lease will be on the agenda for the September 12, 2008 Board meeting. We respectfully request that our case be scheduled for the September 26<sup>th</sup> Board meeting. This is due to our involvement in a custody hearing before the First Circuit Family Court that is also scheduled for September 12<sup>th</sup>. We have attached a letter from our attorney, John W. Schmidtke, Jr., which explains the scheduling conflict.

Thank you for your help with these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick J. Maloney". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Patrick J. Maloney  
enc.

The Law Offices of  
**JOHN W. SCHMIDTKE, JR.**  
*Attorney at Law • A Law Corporation*

August 27, 2008

State of Hawaii  
Department of Land and Natural Resources  
Land Division  
Post Office Box 621  
Honolulu, Hawaii 96809

Re: General Lease No. S-3854  
Patrick & Nancy Maloney, lessees

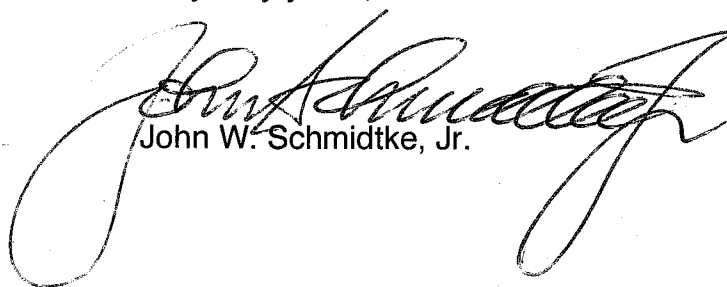
TO WHOM IT MAY CONCERN:

I represent Blair Maloney in a custody dispute involving his son.

A hearing on the matter has been set for September 12, 2008 at 8:00 a.m. at the First Circuit Family Court.

Blair's parents, Patrick and Nancy Maloney, are essential to the matter before the court. Their appearance at the September 12, 2008 hearing is required because the judge may request that they provide supporting testimony. The length of time that the Maloneys would be required to standby to give testimony is not determined.

Very truly yours,



John W. Schmidtke, Jr.

JWS/bjw